

REMARKS

Claims 1, 3-6 and 8 are pending. Claims 2 and 7 have been cancelled. Claim 1 is currently amended. The claim amendments are supported by the specification as originally filed. The amendments to claim 1 are supported, for example, by paragraphs [0050] and [0114] and the Examples. No new matter is introduced by this Amendment. Entry of this response is respectfully requested.

I. Double Patenting Rejection

Claims 1 and 3-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 and 1-24 of copending Application No. 11/022,297 and 10/792,258 respectively.

In the interest of expediting prosecution of the present application, and without conceding the validity of this rejection, Applicants includes with this amendment a terminal disclaimer disclaiming any term of claims 1 and 3-6 issuing from the present application beyond the term of U.S. Patent No. 7,445,941 (10/792,258) and U.S. Patent Application No. 11/022,297. The present application, U.S. Patent No. 7,445,941 (10/792,258) and U.S. Patent Application No. 11/022,297 are co-owned by the same entity. Withdrawal of this rejection is respectfully requested.

Claims 1 and 3-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,143,576.

In the interest of expediting prosecution of the present application, and without conceding the validity of this rejection, Applicant includes with this amendment a terminal disclaimer disclaiming any term of claims 1 and 3-6 issuing from the present application beyond the term of U.S. Patent No. 6,143,576. The present application and U.S. Patent No. 6,143,576 are co-owned by the same entity. Withdrawal of this rejection is respectfully requested.

II. Rejection of Claim 7 under 35 U.S.C. § 112

Claim 7 is rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Claim 7 is cancelled. Therefore, this rejection is moot.

Claim 7 remain rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant respectfully traverses this rejection, however, in order to expedite prosecution without acquiescing to Examiner's rejection claim 7 is now cancelled. Therefore, this rejection is moot.

III. Priority

The Office Action alleges that the effective filing date of the present application has been determined as 7/11/00 because the parent patents, 6,156,270, 6,143,576, and 6,271,040, do not contain the present claimed "nonporous" surface.

Applicant respectfully traverses. As stated in the reply brief filed September 24, 2007 and in the response to Office Action dated August 2, 2006, the present applications claims priority to U.S. Patent No. 5,458,852, filed May 21, 1992 ('852 patent). The '852 Patent states in column 2, lines 4-7 that the described devices "do not use bibulous or porous materials, such as membranes and the like as substrates for the immobilization of reagents or to control the flow of reagents through the device..." (Emphasis Added). Therefore, the present claims are entitled to a filing date of at least May 21, 1992.

IV. Rejection of Claims 1 and 3-5 under 35 U.S.C. § 102(b)

Claims 1 and 3-5 remain rejected under 35 U.S.C. 102(b) as allegedly anticipated by Findlay, *et al.* U.S. Patent No. 5,514,550 (Findlay) or Wu, U.S. Patent No. 5,387,510 (Wu). Applicant respectfully traverses this rejection, however, in order to expedite prosecution and without acquiescing to the Examiner's rejection claim 1 has been amended.

Claim 1 as amended is not anticipated by Findlay or Wu because neither references discloses each and every limitation of the claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP § 2131.

Claim 1 is now amended to recite "wherein the antibodies or fragments thereof bind specifically to said one or more target ligands". Neither Wu nor Findlay disclose this element. To the contrary, the antibodies described in Wu and Findlay are used for detection and do not

bind specifically to the target ligand. For example, Wu discloses in column 11, lines 45-50 (copied below) that primers are labeled with a specific binding moiety, such as antibody, that can be detected by a detectable receptor for the specific binding moiety.

In a preferred embodiment, one of the primers is labeled with a specific binding ligand such as biotin, an antibody or lectin. The labeled primer provides (through amplification) an amplified target nucleic acid which has the specific binding ligand attached. This amplified nucleic acid is detected using a detectably labeled receptor for [the] specific binding ligand. For example, if the specific binding moiety is biotin, the receptor is avidin or an equivalent thereof. The receptor, for example avidin, can be conjugated with an enzyme, or have a radioactive moiety which provides a detectable signal as noted above. (Emphasis added)

Similarly, Findlay discloses in column 7, lines 18- 29 (copied below) that a second probe is labeled with a moiety, such as an antibody, that provides for a detectable dye on the test article.

In one embodiment, the test article is used in a sandwich hybridization assay where a second probe is used to provide detection of the resulting three-part hybrid. This second probe is also complementary to the predetermined nucleic acid, and contains a moiety which provides detection in some manner (as discussed above). Preferably, the second probe is labeled with avidin, biotin, antibody, antigen, hapten, lectin, sugar (or another specific binding moiety), or other detectable moieties described below. Most preferably, the label is an enzyme, which when contacted with appropriate substrates or dye-forming reagents, will provide a detectable dye on the test article. (Emphasis added)

As such, neither Wu nor Findlay disclose antibodies or fragments thereof that bind specifically to one or more target ligands. Thus, neither reference discloses each and every element as set forth in independent claim 1.

Because claim 1 is not anticipated by either Wu or Findlay, neither are claims 3-5 which depend from claim 1 and recite additional features. Therefore, this reference fails to anticipate the claimed invention. Withdrawal of this rejection is thus respectfully requested.

V. Rejection of Claim 7 under 35 U.S.C. §103(a)

Claim 7 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Findlay or Wu in view of Oosta, *et al.* U.S. Patent No. 5,478,751 (Oosta).

Applicant respectfully traverses this rejection. However, Claim 7 is now cancelled and, therefore, this rejection is moot.

CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance. If any matters remain outstanding, the Examiner is encouraged to contact the undersigned at the telephone number listed below so that they may be resolved without the need for additional action and response thereto.

FEE AUTHORIZATION

The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. 23-2415 (Docket No. 36671-716.302).

Respectfully submitted,

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